



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 17, 2005

Mr. Brad Norton  
Assistant City Attorney  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2005-01472

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 219040.

The City of Austin (the "city") received a request for copies of proposals from Credit Systems International, Inc. ("CSII"), Linebarger, Goggan, Blair and Sampson, L.L.P. ("Linebarger"), and Municipal Services Bureau ("MSB") in response to the request for proposals for collection of delinquent accounts. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state that release of some of the requested information may implicate the proprietary interests of CSII, Linebarger, and MSB. You inform us that you have notified these interested third parties of the city's receipt of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). CSII and MSB have responded to the notice and argue that some of the requested information is excepted under section 552.110 of the Government Code. CSII also argues that its information is excepted under section 552.104, while MSB argues that its

information is excepted under 552.101 in conjunction with common law privacy. We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

Initially, we note that some of the information responsive to this request was the subject of a previous ruling from this office. In Open Records Letter No. 2005-00110 (2005), we concluded that the city may withhold the proposal submitted by CSII under section 552.104 of the Government Code. Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the city may continue to rely on our decision in Open Records Letter No. 2005-00110 with respect to the information that was previously ruled upon in that decision.<sup>2</sup> See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

We now turn to your arguments for the remaining submitted information. Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. See Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. See Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a bid has been awarded and a contract has been executed. See *id.*

You inform us that the information at issue relates to a request for proposals for which a contract has not yet been awarded. Based on your representations and our review of the remaining submitted information, we find that the city has demonstrated that the release of this information would harm the interests of the city in a particular competitive situation. We therefore conclude that city may withhold the remaining information at issue in its entirety

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of responsive information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes you to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>2</sup>The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act (the "Act"); and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

at this time pursuant to section 552.104 of the Government Code.<sup>3</sup> However, we note that the city may no longer withhold the submitted information under this exception to disclosure once a contract has been executed and is in effect. *See* Open Records Decision No. 541 at 5 (1990).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

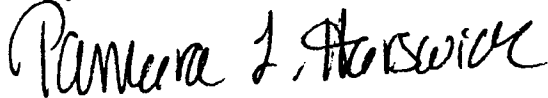
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

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<sup>3</sup>Because we base our ruling on section 552.104 of the Government Code, we need not address the exceptions claimed or the arguments presented by any of the interested third parties in this matter.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 219040

Enc. Submitted documents

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